

Senate Bill No. 702

CHAPTER 116

An act to amend Sections 18005 and 18010 of, to add Sections 18003, 18008, and 18620 to, and to add Chapter 6 (commencing with Section 18300) to Part 1 of Title 3 of, the Corporations Code, relating to associations.

[Approved by Governor July 25, 2005. Filed with
Secretary of State July 25, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 702, Ackerman. Associations.

Existing law sets forth certain requirements and other provisions applicable to unincorporated associations. Existing law exempts a member, director, officer, or agent of a nonprofit association from liability for contractual obligations of the association if specified requirements are satisfied.

This bill would add provisions governing unincorporated associations, including provisions relating to termination or suspension of membership, member voting, amendment of governing documents, merger, and dissolution. The bill would also provide that a member, director, officer, or agent of a nonprofit association shall be liable for injury, damage, or harm caused by an act or omission of the association or an act or omission of a director, officer, or agent of the association if certain conditions are met.

The people of the State of California do enact as follows:

SECTION 1. Section 18003 is added to the Corporations Code, to read:

18003. "Board" means the board of directors or other governing body of an unincorporated association.

SEC. 2. Section 18005 of the Corporations Code is amended to read:

18005. "Director" means a natural person serving as a member of the board or other governing body of the unincorporated association.

SEC. 3. Section 18008 is added to the Corporations Code, to read:

18008. "Governing document" means a constitution, articles of association, bylaws, or other writing that governs the purpose or operation of an unincorporated association or the rights or obligations of its members.

SEC. 4. Section 18010 of the Corporations Code is amended to read:

18010. "Governing principles" means the principles stated in an unincorporated association's governing documents. If an association has no governing documents or the governing documents do not include a

provision governing an issue, the association's governing principles regarding that issue may be inferred from its established practices. For the purpose of this section, "established practices" means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.

SEC. 5. Chapter 6 (commencing with Section 18300) is added to Part 1 of Title 3 of the Corporations Code, to read:

CHAPTER 6. GOVERNANCE

Article 1. [Reserved]

18300. It is the intent of the Legislature to enact legislation relating to the governance of unincorporated associations.

Article 2. Termination or Suspension of Membership

18310. (a) Unless otherwise provided by an unincorporated association's governing principles, membership in the unincorporated association is terminated by any of the following events:

- (1) Resignation of the member.
- (2) Expiration of the fixed term of the membership, unless the membership is renewed before its expiration.
- (3) Expulsion of the member.
- (4) Death of the member.
- (5) Termination of the legal existence of a member that is not a natural person.

(b) Termination of membership does not relieve a person from an obligation incurred as a member before termination.

(c) Termination of membership does not affect the right of an unincorporated association to enforce an obligation against a person incurred as a member before termination, or to obtain damages for its breach.

18320. (a) This section only applies if membership in an unincorporated association includes a property right or if expulsion or suspension of a member would affect an important, substantial economic interest. This section does not apply to an unincorporated association that has a religious purpose.

(b) Expulsion or suspension of a member shall be done in good faith and in a fair and reasonable manner. A procedure that satisfies the requirements of subdivision (c) is fair and reasonable, but a court may also determine that another procedure is fair and reasonable taking into account the full circumstances of the expulsion or suspension.

(c) A procedure for expulsion or suspension of a member that satisfies the following requirements is fair and reasonable:

(1) The procedure is included in the unincorporated association's governing documents.

(2) The member to be expelled or suspended is given notice, including a statement of the reasons for the expulsion or suspension. The notice shall be delivered at least 15 days before the effective date of the expulsion or suspension.

(3) The member to be expelled or suspended is given an opportunity to be heard by the person or body deciding the matter, orally or in writing, not less than five days before the effective date of the expulsion or suspension.

(d) A notice pursuant to this section may be delivered by any method reasonably calculated to provide actual notice. A notice delivered by mail shall be sent by first-class, certified, or registered mail to the last address of the member shown on the unincorporated association's records.

(e) A member may commence a proceeding to challenge the expulsion or suspension of the member, including a claim alleging defective notice, within one year after the effective date of the expulsion or suspension. The court may order any relief, including reinstatement, it determines is equitable under the circumstances. A vote of the members or of the board may not be set aside solely because a person was wrongfully excluded from voting by virtue of the challenged expulsion or suspension, unless the court determines that the wrongful expulsion or suspension was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedure for expulsion or suspension and not the substantive grounds for expulsion or suspension. An expulsion or suspension based on substantive grounds that violate contractual or other rights of the member or are otherwise unlawful is not made valid by compliance with this section.

Article 3. Member Voting

18330. Except as otherwise provided by statute or by an unincorporated association's governing principles, the following rules govern a member vote conducted pursuant to this chapter:

(a) A vote may be conducted either at a member meeting at which a quorum is present or by a written ballot in which the number of votes cast equals or exceeds the number required for a quorum. Approval of a matter voted on requires an affirmative majority of the votes cast.

(b) Written notice of the vote shall be delivered to all members entitled to vote on the date of delivery. The notice shall be delivered or mailed or sent electronically to the member addresses shown in the association's records a reasonable time before the vote is to be conducted. The notice shall not be delivered electronically, unless the recipient has consented to

electronic delivery of the notice. The notice shall state the matter to be decided and describe how and when the vote is to be conducted.

(c) If the vote is to be conducted by written ballot, the notice of the vote shall serve as the ballot. It shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the unincorporated association.

(d) One-third the voting power of the association constitutes a quorum.

(e) The voting power of the association is the total number of votes that can be cast by members on a particular issue at the time the member vote is held.

Article 4. Amendment of Governing Documents

18340. If an unincorporated association's governing principles do not provide a procedure to amend the association's governing documents, the governing documents may be amended by a vote of the members.

Article 5. Merger

18350. The following definitions govern the construction of this article:

(a) "Constituent entity" means an entity that is merged with one or more other entities and includes the surviving entity.

(b) "Disappearing entity" means a constituent entity that is not the surviving entity.

(c) "Surviving entity" means an entity into which one or more other entities are merged.

18360. An unincorporated association may merge into a domestic or foreign corporation, domestic or foreign limited partnership, domestic or foreign general partnership, or domestic or foreign limited liability company. Notwithstanding this section, a merger may be effected only if each constituent entity is authorized to effect the merger by the laws under which it was organized.

18370. A merger involving an unincorporated association is subject to the following requirements:

(a) Each party to the merger shall approve an agreement of merger. The agreement shall include the following provisions:

(1) The terms of the merger.

(2) Any amendments the merger would make to the articles, bylaws, or other governing documents of the surviving entity.

(3) The name, place of organization, and type of entity of each constituent entity.

(4) The name of the constituent entity that will be the surviving entity.

(5) If the name of the surviving entity will be changed in the merger, the new name of the surviving entity.

(6) The disposition of the memberships or ownership interests of each constituent entity.

(7) Other details or provisions, if any, including any details or provisions required by the law under which a constituent entity is organized.

(b) The principal terms of the merger agreement shall be approved by the board, the members, and any person whose approval is required by the association's governing documents. Unless otherwise provided in the governing documents, the members shall approve the agreement in the manner provided for amendment of the association's governing documents. The members may approve the agreement before or after the board approves the agreement.

(c) A merger agreement that would cause the members of an unincorporated association to become individually liable for an obligation of a constituent or surviving entity shall be approved by all of the members of the unincorporated association. Approval by all members is not required under this subdivision if the agreement of merger provides for purchase by the surviving entity of the membership interest of a member who votes against approval of the merger agreement.

(d) A merger agreement may be amended by the board, unless the amendment would change a principal term of the agreement, in which case it shall be approved as provided in subdivision (b).

(e) Subject to the contractual rights of third parties, the board may abandon a merger without the approval of the members.

18380. (a) A merger pursuant to this article has the following effect:

(1) The separate existence of the disappearing entity ceases.

(2) The surviving entity succeeds, without other transfer, to the rights and property of the disappearing entity.

(3) The surviving entity is subject to all the debts and liabilities of the disappearing entity. A trust or other obligation governing property of the disappearing entity applies as if it were incurred by the surviving entity.

(b) All rights of creditors and all liens on or arising from the property of each of the constituent entities are preserved unimpaired, provided that a lien on property of a disappearing entity is limited to the property subject to the lien immediately before the merger is effective.

(c) An action or proceeding pending by or against a disappearing entity or other party to the merger may be prosecuted to judgment, which shall bind the surviving entity, or the surviving entity may be proceeded against or substituted in its place.

(d) A merger does not affect an existing liability of a member, director, officer, or agent of a constituent unincorporated association for an obligation of the unincorporated association.

18390. If, as a consequence of merger, a surviving entity succeeds to ownership of real property located in this state, the surviving entity's record ownership of that property may be evidenced by recording in the county in which the property is located a copy of the agreement of merger that is signed by the president and secretary or other comparable officers

of the constituent entities and is verified and acknowledged as provided in Sections 149 and 193.

18400. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a disappearing entity and that takes effect or remains payable after the merger inures to the benefit of the surviving entity. A trust obligation that would govern property if transferred to the disappearing entity applies to property that is instead transferred to the surviving entity under this section.

Article 6. Dissolution

18410. An unincorporated association may be dissolved by any of the following methods:

(a) If the association's governing documents provide a method for dissolution, by that method.

(b) If the association's governing documents do not provide a method for dissolution, by the affirmative vote of a majority of the voting power of the association.

(c) If the association's operations have been discontinued for at least three years, by the board or, if the association has no incumbent board, by the members of its last preceding incumbent board.

(d) If the association's operations have been discontinued, by court order.

18420. Promptly after commencement of dissolution of an unincorporated association, the board or, if none, the members shall promptly wind up the affairs of the association, pay or provide for its known debts or liabilities, collect any amounts due to it, take any other action as is necessary or appropriate for winding up, settling, and liquidating its affairs, and dispose of its assets as provided in Section 18130.

SEC. 6. Section 18620 is added to the Corporations Code, to read:

18620. (a) A member, director, officer, or agent of a nonprofit association shall be liable for injury, damage, or harm caused by an act or omission of the association or an act or omission of a director, officer, or agent of the association, if any of the following conditions is satisfied:

(1) The member, director, officer, or agent expressly assumes liability for injury, damage, or harm caused by particular conduct and that conduct causes the injury, damage, or harm.

(2) The member, director, officer, or agent engages in tortious conduct that causes the injury, damage, or harm.

(3) The member, director, officer, or agent is otherwise liable under any other statute.

(b) This section provides a nonexclusive list of existing grounds for liability, and does not foreclose any common law grounds for liability.

O